[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.
July 7, 1937.

RAJ KISHOR RAI v. REX

[SINGAPORE MAGISTRATE'S APPEAL No. 24 of 1937].

Criminal law—false evidence—statements made on different occasions—inconsistency of—materiality—proof—Penal Code (Cap. 13) S. 193.

In a prosecution for giving false evidence it is insufficient merely to allege that the accused made on different occasions statements which were inconsistent with one another. A conviction on this charge cannot be sustained unless the prosecution can prove conclusively from facts within the accused's knowledge that one or the other of his statements is necessarily untrue.

MAGISTRATE'S APPEAL.

Tampoe-Phillips for the Appellant.

Storr, Crown Counsel, for the Crown.

The appeal was heard before Terrell, Ag. C.J., on the 2nd day of July, 1937. His lordship delivered an oral judgment allowing the appeal. The grounds of decision are as follows:—

TERRELL, AG. C.J.—The accused was charged under section 193 of the Penal Code with giving false evidence in a judicial proceeding. He was convicted by the District Judge, and sentenced to seven months rigorous imprisonment, and a fine of $300 – or five months rigorous imprisonment.

'Giving false evidence' is defined in section 191 of the Penal Code as follows:

> "Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence."

Now it is open to the prosecution to prove that any particular statement is false to the knowledge or in the belief of the accused, or is a statement which he does not believe to be true, but in such a case a heavy burden is placed upon the prosecution, as it has to be proved not only that the statement was in fact untrue, but that there was knowledge or belief by the accused that the statement was false. When a single statement only is in issue it is extremely difficult to prove both the falsity of the statement and knowledge or belief on the part of the accused. The falsity of the statement may be capable of direct proof, but the criminal intention can only be proved by surrounding circumstances, which point irresistibly to the conclusion that the accused had the necessary knowledge or belief. The prosecution must always prove a criminal intention and for this purpose the materiality of the alleged statement is very relevant. It is true that 'materiality' is not strictly an ingredient of the offence, but it must be taken into consideration in arriving at the intention with which the false statement was made, because if the subject matter of the statement was wholly immaterial to the issue before the Court, the false statement might be attributed to indifference or carelessness on the part of the accused and the criminal intention might be absent.

In order to get over these difficulties it is not unusual for the prosecution to allege two separate inconsistent statements, one of which must be false to the knowledge of the accused, and this was the procedure followed in the present case, and where the statements indubitably refer to the same facts and obviously cannot be reconciled, the proof of criminality presents fewer difficulties.

If the prosecution merely sets out to prove the inconsistency of two statements the materiality of one of the statements is not so important, as the only object of proving the immaterial statement is to show its inconsistency with another statement, leading to the inference that the accused cannot possibly have believed that both statements were true. It would however still be open to the accused to explain that one of the statements which he had made had no real importance, that it was not relevant to the issue before the Court, and that he made it without thinking, his attention never having been really directed to its truth or otherwise.

The one point however upon which the Court must be satisfied is that the two statements are necessarily inconsistent.

It will now be necessary to go shortly into the facts of the present case.

In January 1936 the accused was charged with cheating under section 420 of the Penal Code. It was alleged that he had called one evening at the premises of the Empire Steel Trunk Company, and in the absence of the manager, one Bachoo, and under the pretence of having authority from him, removed goods to the value of $443.50. The accused was acquitted of the charge, but in the course of his evidence-in-chief he said:

> "I have lent money to Bachoo Singh, but not to the proprietor, Baban Singh, of the Empire Steel Trunk Company."

Although therefore the statement was quite immaterial to the issues before the Court, the accused does state that Baban Singh was the proprietor of the Empire Steel Trunk Company. It was also proved that two years previously, on the 15th January 1934, the accused witnessed a Power of Attorney which Baban Singh, as the sole proprietor, gave Bachoo Singh for the purpose of managing the business of the Empire Steel Trunk Company. The learned District Judge found that the accused must have known the contents of the Power of Attorney, and it is

not necessary to differ from his conclusion on this point.

It was also proved that in December 1935 the accused issued a District Court summons against Baban Singh describing him as a trader having his place of business at No. 1236-B Upper Serangoon Road. This is the place where the Empire Steel Trunk Company's business was carried on.

It may be taken as proved therefore that the accused was fully aware that, nominally at all events, Baban Singh was the proprietor of the business.

Then later in 1936 the accused took bankruptcy proceedings against Bachoo Singh and on the 50th September 1936 in the course of such proceedings swore an affidavit, paragraph 5 of which reads as follows:

> "The business now being carried on at No. 1235-B Serangoon Road Singapore is really and truly the business of the debtor herein. Baban Singh who was a watchman in Singapore and who is now on leave in India has no interest at all in the business. The said Baban Singh has only lent his name to help the debtor herein to evade payment to his creditors by carrying on his own business in another man's name."

Now in the charge the last sentence of the paragraph is omitted, but if the substance of the whole paragraph is looked at, what it means is that though Baban Singh was the nominal proprietor of the business, in fact it belonged to Bachoo Singh.

Now it may well be, as the prosecution allege, and as the learned District Judge seems to find, that it is not true that Baban Singh is only the nominal proprietor of a business that belongs to Bachoo Singh, but there has never been any proof one way or the other, and in the absence of such proof the two statements are not irreconcilable.

A parallel case would be that of a plaintiff having a claim in respect of shares registered in the name of A B, but which he has reason to suspect are the property of C D. His plaint might be drawn in the alternative alleging both A B and C D as the beneficial owner of the shares. In the F.M.S. a plaint has to be sworn and, if the contentions of the prosecution in this case are correct, the plaintiff would immediately have committed an offence under section 193 as one of the two statements must necessarily be false. The answer is that in the supposed case of the shares, the prosecution could not possibly succeed unless they could prove, as an irresistible conclusion from facts within the Plaintiff's knowledge that one or other of his allegations was necessarily untrue. Where however the proof of an allegation depends on mixed questions of law and fact such proof would almost certainly not be forthcoming.

So in the present case, it is quite impossible for the Court to say that the allegation that Baban Singh was the nominal, and Bachoo Singh the real, owner of the Empire Steel Trunk Company is incapable of proof, or that the accused knew perfectly well or had reason to believe that it was incapable of proof. In any case the prosecution was not directed to the point, as no evidence was called as to whether or not Baban Singh was merely the nominal owner of the business.

The previous statement that Baban Singh was the proprietor, may only mean that he was the nominal proprietor, and is irrelevant to the issue whether he was or was not the beneficial proprietor. There is no need in this case to consider whether the evidence of inconsistency is sufficient, as no evidence on the real issue was called at all.

I find therefore that the statements which form the subject of the charge are not necessarily irreconcilable, and that the learned District Judge misdirected himself on this point. The appeal therefore was allowed, the conviction quashed and the sentence set aside.

Appeal allowed.
Conviction quashed.

[COURT OF CRIMINAL APPEAL]
TERRELL, AG. C. J.,
THOMAS, C. J. (F.M.S.) & HOWES, J.
July 10, 1937.

V. K. S. SAMY v. REX

[CRIMINAL APPEAL No. 3 of 1937]

Evidence—system—admissibility of evidence of—Evidence Ordinance (Cap. 13) Ss. 14 and 15

Evidence of previous transactions of a similar character can be admitted under Sections 14 and 1-5 of the Evidence Ordinance, not only to rebut the defence of accident but also in a proper case to prove *mens rea*. It is relevant where the accused admits having done the acts constituting an offence with the commission of which he stands charged but seeks to exculpate himself by saying that the acts were done at the direction of his superior. *Teo Koon Seng* v. *Rex*, 5 M.L.J. 10 distinguished.

CRIMINAL APPEAL.

The accused appellant was for over 9 years Chief Clerk on the Batang Malakka Estate. He was in full charge of the estate office and one of his duties was to look after estate accounts. Some time towards the end of 1936, the Manager of the estate one Mr. Vowler, as a result of certain information received by him, looked into the estate accounts and found therein an item of $737-50 entered in the cash book as a payment to a firm known as Sin Loong Chong. It was discovered on further investigation that the counterfoil of the cheque was made out to Sin Loong Chong but that the cheque was made out in the name of Messrs. K. P. M. Mohamed Sultan Brothers. Further investigations disclosed the fact that the cheque was handed to K. P. M. Mohamed Sultan Brothers. The account of this firm with the estate showed that $437-50 of the cheque for